

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION**

**SILVA GREER, AS ADMINISTRATRIX
OF THE ESTATE OF R.J. RANDLE,**

PLAINTIFF,

VS.

CIVIL ACTION NO. 4:08CV042-P-B

MEDTRONIC, INC.,

DEFENDANT.

ORDER

This matter comes before the court upon Plaintiff's Motion to Reconsider or in the Alternative to Alter or Amend Judgment [18]. After due consideration of the motion and the response filed thereto, the court finds as follows, to-wit:

A motion filed pursuant to Fed. R. Civ. P. 59(e) "must clearly establish either a manifest error of law or fact or must present newly discovered evidence' and 'cannot be used to raise arguments which could, and should, have been made before the judgment issued.'" *Schiller v. Physicians Resource Group, Inc.*, 342 F.3d 563, 567 (5th Cir. 2003).

In her motion for reconsideration, the plaintiff largely reasserts arguments previously rejected by the court. Furthermore, the Mississippi Supreme Court decision in *Neglen v. Breazeale*, 945 So.2d 988 (Miss. 2006), cited by the plaintiff in the instant motion, was not only available before judgment was entered, the holding of the case does not operate to change the court's conclusion that the discovery rule does not apply to save the plaintiff's action. Unlike the current circumstances, *Neglen* involved a latent injury and the medical malpractice statute of limitations. In this case, a latent injury is not involved. As the Court in *Neglen* observed: "The discovery rule protects persons with *latent* injuries, that is, injuries which are not manifested or ascertainable within a reasonable time following the negligent act. ... We have gone so far as to say that 'if a latent injury is *not* present the discovery

rule would *not* apply.” 945 So.2d at 991 (emphasis in original).

IT IS THEREFORE ORDERED AND ADJUDGED that Plaintiff’s Motion to Reconsider or in the Alternative to Alter or Amend Judgment [18] is **DENIED**.

SO ORDERED this the 13th day of June, A.D., 2008.

/s/ W. Allen Pepper, Jr.
W. ALLEN PEPPER, JR.
UNITED STATES DISTRICT JUDGE